

L'exemplaire filmé fut reproduit grâce à la générosité de:

Stauffer Library
Queen's University

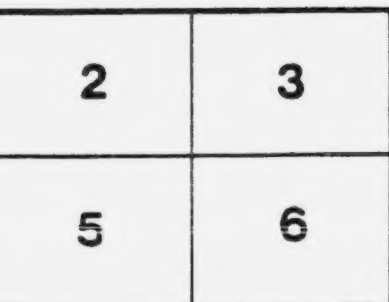
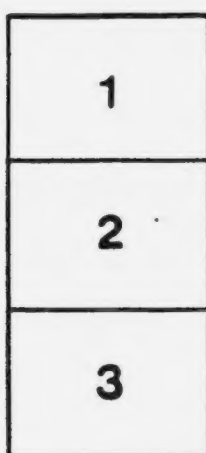
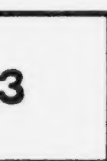
Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole \rightarrow signifie "A SUIVRE", le symbole ∇ signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents.

Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.



SHAKESPEARE'S USE OF LEGAL TERMS

BY

CLARENCE MARION BRUNE, LL.D., D.C.L.,

Licencié ès Lettres de l'Université de Paris.

LONDON :

PRINTED BY W. STRAKER, Ltd., LUDGATE HILL, E.C.

—
1914.

PR 3028 B8

INTRODUCTION.

“ Each change of many coloured life he drew,
“ Exhausted worlds and then imagined new;
“ Existence saw him spurn her bounded reign
“ And panting time toiled after him in vain.”

Dr. JOHNSON.

In the consideration of the question as to whether Shakespeare was educated for the Bar, or whether he made a systematic study of the law, the attention of the student is arrested, at the outset of his investigations, by the divers subjects of which the poet appears to possess an erudite knowledge. We are told by each enthusiastic specialist, in turn, that it would have been impossible for Shakespeare to have acquired the intimate and minute knowledge of the various arts and sciences which he displays throughout his works, in any other way than by systematic study and research such as is necessary for admission to the learned professions. Exhaustive research has been made with a view of proving, from the biblical and theological terms used in Shakespeare's works, that he must have been a theological student. Likewise, from his use of medical terms, it has been sought to prove that he was educated for the profession of medicine and surgery. Other specialists have based their claims on evidence found within his works that he must have been a schoolmaster, a gardener, a sailor, a butcher or a lawyer. It is the last with which we are here especially concerned.

Before proceeding to an examination of the evidence which has been adduced showing Shakespeare's apparent knowledge of the law, let us consider some of his accomplishments in other branches of learning, with a view of ascertaining if his accomplishments in other subjects are not, at least, commensurate with his technical knowledge of the language of the law.

For example, his apparent technical knowledge of seamanship and nautical terms is strikingly illustrated in the following :—

“ O thou dull god why liest thou with the vile
 “ In loathsome beds, and leav'st the kingly couch
 “ A watch-case or a common larum-bell ?
 “ Wilt thou upon the high and giddy mast
 “ Seal up the ship-boy's eyes, and rock his brain
 “ In cradle of the rude imperious surge
 “ And in the visitation of the winds,
 “ Who take the ruffian billows to the top,
 “ Curling their monstrous heads and hanging them
 “ With deafening clamour in the slippery clouds,
 “ That with the hurly death itself awakes ?
 “ Canst thou, O partial sleep, give thy repose
 “ To the wet sea-boy in an hour so rude,
 “ And in the calmest and most stillest night,
 “ With all appliances and means to boot,
 “ Deny it to a King ? Then, happy low, lie down !
 “ Uneasy lies the head that wears the crown.” (1)

And again, his description of a ship in a gale, and the officers' commands, (2) together with some five hundred and thirty-two instances throughout his works cited by nautical commentators, (3) prove his intimate acquaintance with a professional science which is most difficult for a layman to acquire.

(1) “ Henry IV.”, Part. 2.

(2) “ The Tempest,” Act I., Scene 1.

(3) Lord Mulgrave, Captain Balver, etc.

It is said by the Naturalist commentators on Shakespeare that he is generally accurate in his description of animals and other things as found under natural conditions. (1) Three thousand one hundred and fifty seven times throughout his works he alludes to various animals, mentioning two hundred and eighty-three different kinds. (3) The cuckoo is mentioned nineteen times, and in his description (3) of it he seems to be accurate and in direct opposition to the current theory of his time. Accurate as he usually is, Shakespeare apparently regarded the eagle as of the highest rank, endowing him with high-soaring, keen-sighted and princely qualities, whereas modern ornithologists look upon the eagle as a cruel, thieving creature. Again, Shakespeare regarded the toad as the foulest of the animals, while science looks upon it as a clean, useful animal. Unlike our notions of canine fidelity and nobleness, Shakespeare characterizes his villains with the culminating epithet of "ignominious cur," the dog being mentioned, usually in a despicable sense, over three hundred times, and in all his plays except four.

Shakespeare's knowledge of plant life as shown in his plays (4) is quite equal, if not superior to that of many of our celebrated horticulturists, who have sought to show from his numberless allusions to flowers and plant life that he was also learned in this branch of science.

But of all the sciences the one in which Shakespeare exhibits the greatest erudition, free of errors, seems to be that of pathology. This technical knowledge of the

(1) Knight.

(2) C. M. Brune : "Animals in Shakespeare."

(3) "Henry IV."

(4) "Winter's Tale," Act IV., Scene 4, and other plays.

practice of medicine, surgery, obstetrics, anatomy and pharmacy, as shown in his works, according to his medical commentators, surpasses accountability in any other way than by acquisition through special training in the mysteries of these arts and sciences. One medical commentator (1) has selected some four hundred and seventy-five passages from Shakespeare's works elucidating the poet's intimate acquaintance with the field of knowledge covering practically the entire subjects of these arts and sciences.

It is interesting to note that Shakespeare seems to have anticipated Harvey (2) in the discovery of the circulation of the blood; (3) and his lines

"Throw Physic to the dogs; I'll none of it" (4)

and

"You rub the sore

"When you should bring the plaster." (5)

seem, moreover, to have anticipated the principles of osteopathy; while

"One fire drives out one fire; one nail, one nail;"

besides

"And falsehood falsehood cures, as fires cools fire

"Within the scorched veins of one new-burned,"

and other passages (6) are strongly prophetic of the maxim of Hannamann's homœopathic school: *similia similibus curantur*.

(1) R. Rush Field.

(2) Harvey announced his discovery in the year 1628.

(3) "Romeo and Juliet, Act III., Scene 1; "Measure for Measure," Act II., Scene 4; "Coriolanus," Act I., Scene 1; 2 "Henry IV., Act V., Scene 2; "Macbeth," Act II., Scene 2; "Lucrece."

(4) "Macbeth," Act V., Scene 3.

(5) "Tempest," Act II., Scene 1.

(6) "King John," Act III, Scene 1; "Coriolanus," Act IV., Scene 7; "Romeo and Juliet," Act I., Scene 2.

" See how the blood is settled in his face !
 " Oft have I seen a timely-parted ghost,
 " Of ashy semblance, meagre, pale, and bloodless,
 " Being all descended to the labouring heart ;
 " Who, in the conflict that it holds with death,
 " Attracts the same for evidence 'gainst the ener
 " Which with the heart there cools and ne'er returneth
 " To blush and beautify the cheek again.
 " But see, his face is black and full of blood ;
 " His eye-balls further out than when he liv'd,
 " Staring full ghastly like a strangled man :
 " His hair uprear'd, his nostrils stretched from struggling ;
 " His hands abroad display'd, as one that grasp'd
 " And tugg'd for life, and was by strength subdu'd.
 " Look on the sheets, his hair, you see, is sticking ;
 " His well proportioned beard made rough and rugged,
 " Like to summer's corn by tempest lodg'd,
 " It cannot be but he was murder'd here ;
 " The least of all these signs were probable." (1)

This passage has been commended by an eminent
 medical authority—who says that it " must be regarded
 as a perfect description of approaching dissolution." (2)

The signs which often herald the approach of death
 could not be more accurately described than in the
 following :

" 'A made a finer end, and went away, an' it had been
 any christom child ; 'a parted even just between twelve
 and one, e'en at turning o' the tide : for after I saw him
 fumble with the sheets ; and play with flowers, and
 smile upon his fingers' ends, I know there was but one
 way ; for his nose was as sharp as a pen, and 'a babbled
 of green fields, so 'a bade me lay more clothes on his
 feet : I put my hand into the bed, and felt them, and
 they were as cold as any stone ; then I felt to his knees,

-
- (1) " King Henry IV., " Part II., Act III., Scene 2.
 (2) Bell : " Principles of Surgery."

and so upward and upward, and all was as cold as any stone." (1)

Seldom does Shakespeare speak slightly or in a derogatory manner of physicians as he often does of lawyers. He pays the physicians the highest compliment, and they, in turn, have bestowed upon his apparent medical accomplishments their unqualified appreciation. Distinguished physicians maintain that they can often diagnose the precise ailment from Shakespeare's description, and many alienists have commended his vivid delineation of insanity in *Hamlet* and *King Lear*.

But, while enthusiastic medical commentators are seeking to prove that Shakespeare must have made a study of medicine and its allied subjects, is it not possible and even probable that his knowledge of these subjects was rather superficial, though apparently precisely set down in his works? We know for a certainty that he copied largely from Holinshed, Hall, Plutarch and other sources. In view of this, it seems likely that Shakespeare may have derived his apparent technical knowledge of medicine from a similar source. Suspicion "points his slow unmoving finger at" the Medical writings of one Claudius Galenus, as the following lines of the poet indicate his acquaintance with that author's works.

"It gives me an estate of seven years' health; in which time I will make a lip at the physician: the most sovereign prescription in *Galen* is but empiricutick, and, to this preservative, of not better report than a horse-drench." (2)

The foregoing is not intended to be considered in any measure exhaustive of the subjects considered, but is designed only as an introduction showing Shakespeare's

(1) "*Henry V.*," Act II., Scene 3. (2) "*Coriolanus*," Act II., Scene I.

apparent technical knowledge of a few subjects other than law, and, with this in view, we may now proceed to consider his legal acquirements; and the object of this consideration will be to show that, however familiar Shakespeare may appear to have been with technical terms used in the various professions, including that of the law, his works do not show such an accurate knowledge of the law as to justify one in arriving at the conclusion that he was *learned in the law*, in the sense in which the phrase is commonly used.

It is true that, in his plays, Shakespeare makes use of many legal words and phrases. He frequently uses them correctly, but it is also the case that he often uses them incorrectly, and frequently in such a way as to negative any indication that he had any knowledge, technical or otherwise, of the law, such as a trained lawyer would have.

Many passages, from Shakespeare's plays, have been quoted by various writers who believe in his legal acquirements, to prove that he must have had a legal training to make such use of the technical language of the law and to express his thoughts so accurately in legal terms and phraseology. But the question arises, as it so often does in Shakespearean criticism, whether many of these passages, so often quoted, are original with Shakespeare. It is our purpose to indicate some of the sources from which the poet obtained many of the legal terms which he used; and that, in many instances, he has completely misunderstood their legal significance; (1) these will be examined, in due course, under their proper heading.

-
- (1) Use of "dower": "King Lear," Act I., Scene 1; "All's well that Ends Well," Act IV., Scene 4, etc., etc.
 Use of "indenture": "Pericles," Act I., Scene 3.
 Use of "Jointress": "Hamlet," Act I., Scene 2.
 and scores of other instances hereafter cited.

SHAKESPEARE'S OPINION OF LAWYERS, AND THE LAW.

It is unusual for a professional man of any calling to have as low an opinion of his profession as Shakespeare seems to have had of the profession of the law, as gathered from various passages in his works – and this should come as a rude shock to those advocates of the theory that Shakespeare was bred to the legal profession.

“I have neither the scholar's melancholy, which is emulation; nor the musician's, which is fantastical; nor the courtier's, which is proud; nor the soldier's, which is ambitious; nor the lawyer's, which is politic.” (1)

“We must not make a scarecrow of the law
“Setting it to fear the birds of prey,
“And let it keep one shape, till custom make it
“Their perch, and not their terror.” (2)

and later in the same scene we get a glimpse of his opinion of the jury system:

“I do not deny,
“The jury, passing on the prisoner's life,
“May in the sworn twelve, have a thief or two
“Guiltier than him they try. What's open made
“To justice, that justice seizes; what knows the law,
“That thieves do pass on thieves?” (2)

and later in the same scene and again in the previous act, we not only get an unflattering comparison to the lawyer in “come, fear you not; good counsellors lack not clients,” (3) but, moreover, we are treated to a view of another avocation with which Shakespeare exhibits an extraordinary familiarity.

(1) “As You Like It,” Act IV., Scene 1.

(2) “Measure for Measure,” Act II., Scene 1.

(3) “Measure for Measure,” Act I, Scene 2.

The opinion, in regard to lawyers and the administration of justice, that Shakespeare repeatedly expresses is constantly at variance with the generally accepted notions of the respect the professional man has for his calling.

- "Plate sin with gold,
 "And the strong lance of justice hurtless breaks;
 "Arm it in rags, a pigmy's straw does pierce it." (1)
 "And 'tis gold
 "Which makes the true man kill'd, and saves the thief." (2)

Further:

- "In the corrupted currents of this world,
 "Offence's gilded hand may shove by justice;
 "And oft 'tis seen, the wicked prize itself
 "Buys out the law: but 'tis not so above:
 "There is no shuffling, there no action lies
 "In his true nature; and we ourselves compell'd,
 "Even to the teeth and forehead of our faults,
 "To give in evidence." (3)

Besides:

- "All scholars, lawyers, courtiers, gentlemen,
 "They call false caterpillars, and intend their death." (4)

And again in the same play:

- "The first thing we do, let's kill all the lawyers." (5)

and:

- "Crack the lawyer's voice,
 "That he may never more false titles plead." (6)

or:

- "In law, what plea so tainted and corrupt
 "But, being season'd with a gracious voice
 "Obscures the show of evil?" (7)

-
- (1) "King Lear," Act IV., Scene 6.
 (2) "Cymbeline," Act II., Scene 3.
 (3) "Hamlet," Act III., Scene 3.
 (4) "Henry VI.," Part II., Act IV., Scene 4.
 (5) "Henry IV.," Part II., Act IV., Scene 2.
 (6) "Timon of Athens," Act IV., Scene 3.
 (7) "Merchant of Venice," Act III., Scene 2.

Shakespeare had a large personal experience with lawyers and the law, appearing as plaintiff and defendant in a great many cases, besides the vaster experience of his father, either as plaintiff or defendant, in some fifty suits at law, which must have come to the notice of the poet; and it was probably this unpleasant experience that caused him to form such a low opinion of lawyers and administration of justice in his time, and caused him to write such advice to prospective litigants as:

"It pleases time, and fortune, to lie heavy
 "Upon a friend of mine, who, in hot blood,
 "Hath stepp'd into the law, which is past depth
 "To those that, without heed, do plunge into it." (1)

and:

"Still you keep o' the windy side of the law:" (2)

and to hurl such epithets at lawyers and to degrade the administration of justice as we find in the following passages:

"Then 'tis like the breath of an unfre'd lawyer; you give me nothing for 't:" (3)

"With lawyers in the vacation: for they sleep between term and term, and then they perceive not how times move." (4)

And the mad gallop of Queen Mab:

"O'er lawyers' fingers, who straight dream on fees": (5)

besides the maladministrative significance of:

"Help, master, help; here's a fish hangs in the net, like a poor man's right in the law; 'twill hardly come out." (6)

(1) "Timon of Athens," Act III., Scene 5.

(2) "Twelfth Night," Act III., Scene 4.

(3) "King Lear," Act I., Scene 4.

(4) "As You Like it," Act III., Scene 2.

(5) "Romeo and Juliet," Act I., Scene 4.

(6) "Pericles," Act II., Scene 1.

And:

"Where I have seen corruption boil and bubble,
 "Till it o'errun the stew: laws for all faults,
 "But faults so countenanc'd, that the strong statutes
 "Stand like the forfeits in a barber's shop,
 "As much in mock as mark." (1)

Culminating in the mockery of the court (uniting the jurisdictions of law and equity, unknown in Shakespeare's time) organized by the mad King Lear, who constitutes Mad Tom and the Fool Lord Chief Justice and Lord Chancellor respectively, for the imaginary trial of his daughters.

LEAR.

(To EDGAR) "Thou robed man of justice, take thy place:

(To THE FOOL) "And thou, his yoke-fellow of equity,
 "Bench by his side: (To KENT) You are of the
 commission,
 "Sit you too."

EDGAR.

"Let us deal justly.

"Sleepest, or wakest thou, jolly shepherd?

"Thy sheep be in the corn;

"And for one blast of thy manikin mouth,

"Thy sheep shall take no harm,

"Pur! the cat is grey."

LEAR.

"Arraign her first: 'tis Goneril. I here take my oath before
 this honourable assembly, she kicked the poor King her
 father."

FOOL.

"Come hither, mistress; is your name Goneril?"

LEAR.

"She cannot deny it."

FOOL.

"Cry you mercy, I took you for a joint-stool."

(1) "Measure for Measure," Act V., Scene 1.

LEAR.

" And here's another, whose warp'd looks proclaim
 " What store her heart is made of.—Stop her there!
 " Arms, arms, sword, fire! Corruption in the palace!
 " False justice, why hast thou let her 'scape?" (1)

Shakespeare's appreciation of the administration of justice is further exemplified in such passages as this:

" The justice and the truth o' the question carries
 " The due o' the verdict with it; at what ease
 " Might corrupt minds procure knaves as corrupt
 " To swear against you? Such things have been done." (2)

This naturally suggests an examination of his views of the judiciary as found in his works. His estimate of the bench seems to discount even his low opinion of the other branches of the legal profession.

" See how yon' justice rails upon yon' simple thief
 Hark, in thine ear: Change plans; and handy-dandy
 which is the justice, which is the thief." (3)

" and then the justice,
 " In fair round belly, with good capon lin'd,
 " With eyes severe, and beard of formal cut,
 " Full of wise saws and modern instances,—
 " And so he plays his part:" (4)

And, " You wear out a good wholesome forenoon, in hearing a cause between an orange-wife and a fossett seller; and then rejoin the controversy of three-pence to a second day of audience. When you are hearing a matter between party and party, if you chance to be pinched with the cholick, you make faces like mummers set up the bloody flag against all patience: and, in roaring for a chamber-pot, dismiss the controversy."

-
- (1) "King Lear," Act III., Scene 6.
 (2) "Henry VIII.," Act V., Scene 1.
 (3) "King Lear," Act IV., Scene 6.
 (4) "As you Like it," Act II., Scene 7.

bleeding, the more entangled by your hearing: all the peace you make in their cause, is, calling both the parties knaves; You are a pair of strange ones." (1) And, "Thou hast appointed justices of peace, to call men before them about matters they were not able to answer." (2)

Taking into consideration the facts that Shakespeare had a large acquaintance with barristers and had had considerable personal experience in law cases in which he or his father was directly interested, it does not seem improbable that through this experience he might have acquired many legal terms, which he has made use of in his writings, without having made any systematic study of the law, as some writers have attempted to prove. It has, moreover, been sought to show that had Shakespeare been educated for the Bar he would have had more respect for his profession and the law in general and not have been such a persistent law-breaker himself. But, perhaps, it may have been because he was constantly within the grip of the law that so degraded his opinion of it.

"No rogue e'er felt that halter draw,
"With good opinion of the Law."

(1) "Coriolanus," Act II., Scene 1.
(2) "Henry VI.," Part II., Act IV., Scene 7.

SHAKESPEARE'S CONCEPTION OF THE LAW.

The history in the Bar in England shows that it has always been to the fore in great reforms and revolutions. It is the champion of liberty and of the rights of the oppressed people, maintaining the equality of men in the eyes of the law, as against the prerogative of the Crown, against its resultant favoritism and systematic tyranny. In view of this the advocates of the theory that Shakespeare was a lawyer cannot but look upon him as a rebel in the popular ranks. It is inconceivable that a lawyer could have written a play with King John as a central figure without even alluding to the most important incident of his reign, the great Charter of English liberties written from this monarch at Runnymede. Nowhere in Shakespeare's works is Magna Charta mentioned. Yet these advocates maintain that Shakespeare had a lawyer's conservatism. "He respected the established order of things. He chisels the republican Brutus in cold marble beauty, but paints with beams of sunlight the greatness, bravery and generosity of imperial Cæsar. Coriolanus is the impersonation of patrician contempt for popular rights. Shakespeare passes unnoticed the causes which led to Cade's insurrection, because he cared not for them—causes so just that honourable terms were exacted by the insurgents. His portrait of Joan Arc, the virgin Mother of French nationality, who raised it to glory because the people believed in her, is a gross offence. There is nowhere a hint of sympathy with personal rights as against the sovereign nor with

Parliament—then first assuming its protective attitude towards the English people." (1)

Another great commentator goes on to say that "He is uniformly right in his law and in his use of legal phraseology, which no mere quickness of intuition can account for," (2) and that "were an issue tried before me as Chief Justice at the Warwick Assizes, 'whether William 'Shakespeare, late of Stratford-upon-Avon, gentleman, ever was clerk in an attorney's office in Stratford-upon-Avon, aforesaid,' I should hold that there is evidence to go to the jury in support of the affirmative, but should add that the evidence is very far from being conclusive, and I should tell the twelve gentlemen in the box that it is a case entirely for their decision—without venturing even to hint to them, for their guidance, any opinion of my own. Should they unanimously agree in a verdict either in the affirmative or negative, I do not think that the Court, sitting *in banco*, could properly set it aside and grant a new trial. But the probability is (particularly if the trial were by a special jury of Fellows of the Society of Antiquaries) that, after they had been some hours in deliberation, I should receive a message from them—'*there is no chance of our agreeing, and therefore we wish to be discharged*;' that having sent for them into Court, and read them a lecture on the duty imposed upon them by law of being unanimous I should be obliged to order them to be locked up for the night; that having sat up all night without eating or drinking, and 'without fire, candle-light excepted,' they would come into Court next

(1) Senator C. K. Davis: "Law of Shakespeare," p. 34.

(2) Lord Campbell: "Lives of the Chief Justices of England," Vol. I., p. 50, note.

morning pale and ghostly, still saying ' we cannot agree,' and that according to the rigour of the law, I ought to order them to be again locked up as before till the close of the assizes, and then sentence them to be put in a cart, to accompany me in my progress towards the next assize town, and to be shot into a ditch on the confines of the County of Warwick." (1)

(1) Lord Campbell : "Shakespeare's Legal Acquirements," p. 11.

ot agree,'
ought to
the close
put in a
the next
confines

THE MERCHANT OF VENICE.

Let us now examine, at some length, a few of the passages from the "Merchant of Venice," so frequently quoted to prove Shakespeare's knowledge of the law. Many commentators regard these passages as *the last word* of the argument in summing up their case before the Court of which they are at once the self-constituted judge, jury and advocate.

"Go with me to a notary; seal me there
"Your single bond; and in a merry sport,
"If you repay me not on such a day,
"In such a place, such sum, or sums as are
"Express'd in the condition, let the forfeit
"Be nominated for an equal pound
"Of your fair flesh, to be cut off and taken
"In what part of your body pleaseth me." (1)

These were the conditions demanded by Shylock of Antonio for the loan of three thousand ducats which Antonio desired to obtain for the use of his friend Bassanio, and to which Antonio agreed, replying:—

"Content, in faith; I'll seal to such a bond." (1)

We find that Antonio did enter into such a convention with Shylock and on account of non-payment of the three thousand ducats he is brought into Court, and judgment according to the terms of the bond is demanded by Shylock. The legal aspects of this trial will be considered in due course, but, before proceeding to such consideration, let us make a few observations concerning Shylock's proposal to Antonio in the foregoing quotation, as it is one of the principal incidents in

(1) "Merchant of Venice," Act I., Scene II.

the play, and the one on which the trial of Antonio for his life is based, and the one by means of which many commentators have founded their arguments in favour of the contention that Shakespeare must have been deeply learned in the law. It seems to me that they have all gone wide of the mark in this respect for the reason that it doesn't appear by the terms of the bond that it could be held to be a legally valid instrument either under the Common Law of England or under the Civil Law then in force in the City of Venice where the action was instituted, because the penalty consequent upon its non-fulfilment involved the committing of a crime in the cutting by Shylock of a pound of flesh from nearest Antonio's heart. A condition, in a will under the Roman Law, impossible of fulfilment or involving a crime, would be treated as if no such condition had been imposed and the will would be enforced, simply eliminating the condition as superfluous, but in a contract the imposition of such a condition rendered the contract, *ipso facto*, null and void; and the same is, and always has been true under the Common Law of England.

It may be argued that Shakespeare put these words into the mouth of Shylock, on the assumption that Shylock would not be presumed to know their legal effect, but it would seem that such an argument would be extremely far-fetched when we consider that the lending of money on bond was his trade and that it was highly probable he went to his own notary, who would have tempered his enthusiasm by his advice that such a bond would be of no value and not enforceable.

Instead of Shakespeare having any such idea, or in fact any real appreciation of the legal significance of such an

instrument, it seems far more likely that his genius for dramatic construction was moved to make use of the incident, from whatever source he may have obtained it, to the utter disregard of the legal effect of such a bond. In this same proposal of Shylock's, Shakespeare seems, further, to misconceive the entire nature of the bond he is asking for in making use of the word "single." This description of the bond as "your single bond" would have been quite correct in Shakespeare's time if he had stopped with that. Such bonds under seal were then used as ordinary contracts; but such bonds or contracts, under seal, had no collateral conditions; and when Shylock asked Antonio to agree to a penalty on nonfulfilment, the bond was not a single bond, but one with a collateral condition. Had he used the word "special" instead of "single," he would have been more lawyer-like and correct in its description.

Some commentators have tried to show that "single" is a misprint, and that "simple" should have been used. But for the most part these commentators have not been lawyers, or, if they have, they have overlooked the fact that a simple bond or contract, under the English Common Law, was not under seal, and was enforceable only after proof of consideration. So this theory must be dismissed as not coming under the definition of a simple contract; and the same argument applies under the Civil Law in force in Venice, except in the latter case the word "formal" instead of "special" under the Common Law or "single," as Shakespeare wrote it, should have been used to accurately describe the kind of bond which Shylock desired, and which Antonio agreed to seal and which he did afterwards seal, and on which he is brought into court. Either of these words would have

served, equally well, his dramatic requirements and fulfilled the metrical conditions, and are the words which any lawyer would undoubtedly have used in Shakespeare's day, for such bonds were then in such common every-day use that it seems impossible for anyone, even without any technical knowledge of the law, to have so described the bond which Shylock was demanding.

THE TRIAL.

It is astonishing that such an instrument should ever have been executed, and still more astonishing that the Duke of Venice, who was trying the case, did not instantly dismiss it on the grounds of the invalidity of the bond, on account, as we have seen, of the illegality of the penalty it contained. The Duke seems to have had plenty of time to consider the question before the actual trial. This is shown by the statement of the messenger who comes to Belmont to acquaint Bassanio of the loss of Antonio's ships and the forfeiture of the bond, when he says of Shylock :—

" He plies the Duke at morning, and at night,
 " And doth impeach the freedom of the state
 " If they deny him justice : twenty merchants,
 " The duke himself, and the magnificoes
 " Of greatest port, have all persuaded with him,
 " But none can drive him from his envious plea
 " Of forfeiture, of justice, and his bond." (1)

and

" Besides, it should appear, that if he had
 " The present money to discharge the Jew,
 " He would not take it." (1)

(1) " Merchant of Venice," Act III., Scene 2.

By this we see that the question of a possible tender of payment had been raised before the actual trial, and that Shylock had signified that in such an event he would refuse the payment and demand the forfeiture. This he actually did do at the trial—the legal effect of this refusal of payment will be considered later.

The fact that the Duke had been considering the case before the trial scene is further shown in the beginning of the trial, when Antonio says to the Duke :

“ I have heard

“ Your grace hath ta'en great pains to qualify
 “ His rigorous course ; but since he stands obdurate
 “ And that no lawful means can carry me
 “ Out of his envy's reach, I do oppose
 “ My patience to his fury.” (1)

and further by the Duke's own words :

“ Shylock, the world thinks, and I think so too,
 “ That thou but lead'st this fashion of thy malice
 “ To the last hour of act ; and then, 'tis thought
 “ Thou'lt show thy mercy and remorse, more strange
 “ Than is thy strange apparent cruelty :
 “ And where thou now exact'st the penalty,
 “ Which is a pound of this poor merchant's flesh,
 “ Thou wilt not only lose the forfeiture,
 “ But, touched with human gentleness and love,
 “ Forgive a moiety of the principal.” (1)

and Shylock's reply :

“ I have possess'd your grace of what I purpose
 “ And by our holy Sabbath have I sworn
 “ To have the due and forfeit of my bond :
 “ If you deny it, let the danger light
 “ Upon your charter, and your city's freedom.” (1)

(1) “ Merchant of Venice,” Act IV., Scene 1.

Therefore we see that Shylock had, before the actual trial of the case, thoroughly acquainted the Court with his contention.

"And doth impeach the freedom of the state

"If they deny him justice." (1)

and at the trial used most impressive language :

"And by our holy Sabbath have I sworn

"To have the due and forfeit of my bond :

"If you deny it, let the danger light

"Upon your charter, and your city's freedom." (2)

There can only be one reason for Shakespeare allowing the Duke to go on with the case, considering the fact that the bond was void *ab initio*, and that was because he (Shakespeare, and not the Duke) did not know that such a bond would be invalid, either under the Civil Law in Venice or under the Common Law of England, for, had he realized its invalidity, he would, doubtless, with all his wonderful resources of ingenuity, have invented a legal instrument on which to base his dramatic trial—as dramatic effect is the only possible plea for such ignorance of legal principles. Moreover, a lack of legal significance is manifest in

"If you deny it, let the danger light

"Upon your charter, and your city's freedom." (2)

It does not seem to have occurred to Shakespeare that Venice was not a chartered City, receiving its Charter from some superior power to itself, and that it was an independent sovereign state existing by force of its own power among other States, and that it was therefore in no danger of losing its Charter as it had none to lose, or of losing the freedom of the State.

(1) "Merchant of Venice," Act III., Scene 2.

(2) "Merchant of Venice," Act IV., Scene 1.

After Shylock has refused to accept payment in open Court, and says:

"The pound of flesh which I demand of him,
 "Is dearly bought; 'tis mine, and I will have it:
 "If you deny me, fie upon your law!
 "There is no force in the decrees of Venice:
 "I stand for judgement: answer, shall I have it?" (1)

and Antonio, the defendant, says:

"I do beseech you,
 "Make no more offers, use no further means,
 "But, with all brief and plain conveniency,
 "Let me have judgement and the Jew his will." (1)

the Duke answers Shylock:

"Upon my power, I may dismiss this court,
 "Unless Bellario, a learned doctor,
 "Whom I have sent for to determine this,
 "Come here to-day." (1)

which indicates that the Duke, if left to his own conclusion, would arbitrarily dismiss the action; but there is nothing to show that he would base a dismissal upon the invalidity of the bond or any legal points whatever. Here we have both the plaintiff and defendant demanding the Court to pronounce judgment, and the Court intimating that he will arbitrarily dismiss the case unless Bellario comes along and finds some means of dissuading him from using his arbitrary power as the highest in the Commonwealth, and contrary to law as he apparently understood it. So as a matter of fact, had Portia not appeared to plead Antonio's case, he would have been set free, through the dismissal of the case, by the arbitrary action of the Duke. But, whether this is all good law or not, it is good *drama*; so we are treated to Portia's extraordinary exposition of the law, the legal effect of the bond and the power of the Court.

(1) "Merchant of Venice," Act IV., Scene 1.

Portia had come as the representative of Bellario, whom the Duke was expecting to try the case. Bellario had written of Portia to the Duke :

"We turn'd o'er many books together;
"He is furnished with my opinion." (1)

It was a common practice in Civil Law countries for judges to call in specialists, learned in a particular branch of the law, whether judges or not, to try cases in their stead. This not having been the practice under the Common Law of England, it is difficult to say where Shakespeare got the idea from, *i.e.*, whether he knew that it was common in Venice or whether he borrowed it from some mediæval or later writer on the subject—the latter, however, seems to be the most likely theory.

Instead of Portia dismissing the action on the grounds of the invalidity of the bond, she holds the bond to be a valid instrument, when she says :

"Of a strange nature is the suit you follow;
"Yet in such rule, that the Venetian law
"Cannot impugn you as you do proceed." (1)

and gets Antonio to "confess the bond" and Bassanio to tender payment—all before she has seen the bond. After which Bassanio seems to have asked Portia to do exactly what the Duke intended to do, *viz.*, arbitrarily dismiss the case, when he says :

"I beseech you,
"Wrest once the law to your authority;
"To do a great right, do a little wrong,
"And curb this cruel devil of his will." (1)

to which Portia replies :

"It must not be. There is no power in Venice
"Can alter a decree established;
"'Twill be recorded for a precedent,
"And many an error by the same example,
"Will rush into the state: it cannot be." (1)

(1) "Merchant of Venice," Act IV., Scene 1.

This is of course sound reasoning on the assumption that the bond is a valid instrument, enforceable under the laws of Venice, which was not the case, but Portia proceeds to take the former view :

" For the intent and purpose of the law

" Hath full relation to the penalty,

" Which here appeareth due upon the bond." (1)

and, when she says :

" Why this bond is forfeit ;

" And lawfully, by this the Jew may claim

" A pound of flesh, to be by him cut off

" Nearest the merchant's heart," (1)

she holds that the bond is enforceable under the law and that Shylock has the legal right to claim judgment, and a few moments later pronounces the judgment of the Court :

" A pound of that same merchant's flesh is thine ;

" The court awards it, and the law doth give it." (1)

and then proceeds to order an execution of the judgment :

" And you must cut this flesh from off his breast ;

" The law allows it, and the court awards it." (1)

Now, as the Court has held the bond to be a perfectly regular and legal instrument, enforceable under the law, pronounced judgment and has ordered execution of the judgment directed to Shylock, any act of execution under the decree would, of course, be perfectly legal, and the executioner, acting under authority of the Court, would be guilty of no crime. This was apparently in Shylock's mind in contemplating the execution, when he said :

" What judgement shall I dread, doing no wrong." (1)

When a Court commands a thing to be done, the order carries with it such rights as may be necessary and

(1) " Merchant of Venice," Act IV., Scene 1.

incidental to the effectual carrying out of the order, without which the order would have no effect. This is an elementary principle of both the Common Law in England and of the Civil Law in force in the Commonwealth of Venice. In this case, the Court ordered Shylock to cut a pound of flesh from off the merchant's breast, in accordance with the terms of the bond on which the judgment was based, and this order was in accordance with the foregoing principle of law giving him the necessary collateral rights incidental to the due execution of the order; yet contrary to this principle of the Common and Civil Law and to every principle of natural justice, Portia stops the executioner by saying:

- " This bond doth give thee here no jot of blood ;
- " The words expressly are, a pound of flesh :
- " Take then thy bond, take then thy pound of flesh ;
- " But, in the cutting it, if thou dost shed
- " One drop of Christian blood, thy lands and goods
- " Are, by the laws of Venice confiscate
- " Unto the State of Venice.
- " Therefore, prepare thee to cut off the flesh.
- " Shed thou no blood ; nor cut thou less, nor more,
- " But just a pound of flesh : if thou tak'st more,
- " Or less, than a just pound,—be it but so much
- " As makes it light, or heavy, in the substance,
- " Or the division of the twentieth part
- " Of one poor scruple,—nay, if the scale do turn
- " But in the estimation of a hair,—
- " Thou diest, and all thy goods are confiscate." (1)

Therefore, according to this pronouncement, if Shylock obeys the order of the Court, by proceeding with the execution, he will forfeit his life and all his lands and goods, and if he does not obey the Court's order and proceed with the execution, he will clearly be in contempt of court. This is not now and never has been

(1) " Merchant of Venice," Act IV., Scene 1.

good law. It is not justice, but injustice, to place Shylock in so awkward a position by sheer perversion of the law; yet not content with this illegal persecution, when Shylock, broken and disgusted with the proceedings, says:

"Give me my principal and let me go." (1)

Shakespeare again seems not to appreciate an elementary principle of law in causing Portia, acting in the capacity of a judge, to say:

"He hath refus'd it in the open court;

"He shall have merely justice, and his bond." (1)

Is it any wonder that the poor old Jew asks in surprise:

"Shall I not have bearly my principal?" (1)

To which Portia replies:

"Thou shalt have nothing but the forfeiture,

"To be so taken at thy peril, Jew." (1).

It is inconceivable that anyone, with even an elementary knowledge of law, could have put such a ruling into the mouth of the judge. By this ruling, simply because a tender had been made and refused, the plaintiff was deprived of his right of action to recover the debt. No question is raised as to the tender having been made by one not a party to the suit, but doubtless, if such question had been raised, Portia would have held that it was of no effect, although, by the Common and Civil Law, it would have been a perfectly legal tender. (2) There seems to be scarcely anything in this play that is set down or conducted in a lawyer-like manner, and Shakespeare seems not to have the slightest appreciation of legal principles or legal form in his mad race for dramatic effects, and when, finally, Shylock becomes

(1) "Merchant of Venice," Act IV., Scene 1.

(2) "Institutes of Gaius," p. 411. (Poste.)

disgusted with the whole affair and apparently chooses to
brave contempt of Court by saying :

“Why, then the devil give him good of it !
“I'll stay no longer question.” (1)

thereby refusing to carry out the execution which the
Court has ordered, which would not have constituted a
crime, being sanctioned and ordered by the Court, and
notwithstanding the fact, the Court ruled that if he had
carried out the order his life and goods would have been
forfeit to the State, Shakespeare proceeds to an equally
absurd interpretation of Shylock's legal position by having
the Court say :

“The law hath yet another hold on you,
“It is enacted in the laws of Venice,—
“If it be proved against an alien,
“That by direct, or indirect attempts,
“He seek the life of any citizen,
“The party 'gainst the which he doth contrive
“Shall seize on half his goods: the other half,
“Comes to the privy coffer of the state;
“And the offender's life lies in the mercy
“Of the duke only, 'gainst all other voice,
“In which predicament, I say, thou stand'st:
“For it appears by manifest proceedings,
“That indirectly, and directly too,
“Thou hast contriv'd against the very life
“Of the defendant; and thou hast incurr'd
“The danger formerly by me rehearsed.” (1)

This might have been good law if the Court had not
previously ruled that the bond was a valid instrument
and pronounced judgment and ordered execution. If
this was the law of Venice, the proper procedure would
have been to plead the illegality of the bond and proceed
criminally against Shylock under this law for conspiring
against the life of a Venetian citizen, but, when the
Court held that the bond was a valid instrument
enforceable under the law, he had a legal right to the

(1) “Merchant of Venice,” Act IV., Scene 1.

chooses to

which the
stituted a
Court, and
if he had
have been
an equally
by having

forfeiture, and the Court ordered the execution, there could be no action against Shylock for conspiracy. If any one was guilty of a conspiracy, it would seem to be Portia, and not Shylock, for exceeding judicial authority in ordering an illegal execution, and failing this, proceeding against Shylock for something that the Court had ordered him to do. The whole fabric of the case seems to be a flight of Shakespeare's dramatic imagination, without reference to even the most fundamental principles of law or justice: simply manufactured law for the dramatic purposes of the author and nothing more—unless we look upon Portia as a sort of Shakespearean Chancellor of the Exchequer in *wresting the law to her own authority* for the purpose of securing Shylock's fortune for the Exchequer of the State, even at the cost of the life of Antonio, and failing this, to confiscate half his fortune for the State under the alleged authority of another *so-called law of Venice*. But this legal or illegal financier is not content with stripping Shylock of his present fortune; knowing him to be thrifty in the accumulation of wealth, it is ordered that he shall

“record a gift,

“Here in the court, of all he dies possess'd

“Unto his son Lorenzo and his daughter.” (1)

t had not
nstrument
ution. If
ure would
d proceed
conspiring
when the
nstrument,
ght to the

in consideration of the Duke pardoning his life. The legal aspects of this amazing document will be considered presently. But first a few words are pertinent respecting Antonio's proposal to create a trust for Lorenzo's benefit:

“So please my lord the duke, and all the court,

“To quit the fine for one half his goods,

“I am content, so he will let me have,

“The other half in use, to render it,

“Upon his death, unto the gentleman

“That lately stole his daughter.” (1)

(1) “Merchant of Venice,” Act IV., Scene 1.

This passage has often been cited by commentators (1) to prove that Shakespeare must have been learned in the law to make use of such precise language in the creation of the trust to settle one-half the Jew's property upon his daughter and son-in-law, and is even mentioned by one text-book authority (2) in the illustration of a "use." But, while the passage is in a certain simple sense indicative of a trust, I see nothing so extraordinarily striking as to warrant the conclusion that Shakespeare possessed any special erudition in the subject of trusts or uses. The language of the passage is beautifully concise but such as might have been written by any dramatist of the present or of Shakespeare's day, without any special knowledge of the law, more than might be expected in any well read writer of plays or other fiction. Moreover when viewed in connection with the conduct of the trial as a whole, it does not seem possible that anyone with any technical knowledge of legal procedure could have written it, any more than they could have written the preceding *conspiracy indictment*, which has been heretofore considered. Taken as a sequel to the *conspiracy indictment*, if that indictment had been good law, the sequel could doubtless be considered equally sound. But as we have seen that the *conspiracy indictment* would have been good only if the Court had held the bond to be illegal, and the Court did not so hold, but, on the contrary, the Court having held the bond to be valid and enforceable, the trust paragraph would have the same legal status, and, likewise, as there could be no action against Shylock for conspiracy under that indictment

(1) C. K. Davis, Lord Campbell, etc.

(2) Lewin's "Treatise on Trusts."

there could be no warranty in law for taking Shylock's goods, or the creation of the trust.

We now come to the climax of injustice and legal absurdity in Antonio's proposal:

"that he do record a gift,
"Here in the court, of all he dies possess'd
"Unto his son Lorenzo and his daughter." (1)

This the Court orders done when the Duke says:

"He shall do this; or else I do recant
"The pardon that I late pronounced here." (1)

Shylock, of course, must either lose his life or acquiesce, so he is forced to reply:

"I am content." (1)

and, Portia says:

"Clerk, draw a deed of gift." (1)

Shylock, completely broken in spirit by the injustice he has received, is glad to escape with his life, and makes a pathetic plea to be allowed to leave the Court:

"I pray you give me leave to go from hence:
"I am not well, send the deed after me,
"And I will sign it." (1)

which the Duke brutally grants by saying:

"Get thee gone, but do it." (1)

And so ends the most remarkable trial scene recorded in literature—remarkable alike for its wonderful dramatic effect and legal absurdity.

Much ingenuity has been displayed by critics (2) in trying to explain the instrument last mentioned, viz., the "deed of gift, of all he dies possess'd." All this may be very effective for dramatic purposes, but when examined from a legal point of view, its absurdity is at once apparent, for such an instrument would include all property Shylock might acquire between the time of the

(1) "Merchant of Venice," Act IV., Scene 1.

(2) Senator Cushman K. Davis: "The Law in Shakespeare," etc.

trial and his death, and such a document as Shakespeare describes here has none of the elements to make it legally effective under either the Civil (1) or Common Law, or rather it has elements that would render it invalid. If it be regarded as a will or as a gift *mortis causa*, it would fail as such, because it was apparent that it was not his free and voluntary act, and that it was made on compulsion. Moreover, if it is regarded as a will, he would have the right, under either the Civil or Common Law, to alter its terms at any time, or render it null and void by making a later will. Furthermore this order, like the trust and the conspiracy orders, could not be legally operative against Shylock, even if he did not avail himself of his legal rights to rescind the will or gift *mortis causa*, as one pleases to call it, so long as the Court held that the bond was legal and enforceable, as it did hold—the effect of which has been heretofore fully discussed. Therefore, having seen that this trial from beginning to end has not conformed to any known legal form or requirement of either the Civil or Common Law, we must conclude that the law and procedure in this case have no warrant of validity—and that the whole matter was a fiction of the author's brain—manufactured for his dramatic purposes—and that he had no appreciation of their legal significance. Perhaps this is why he had a woman try the case, for we find him saying in another play:

“I will make

“One of her women lawyers to me, for

“I yet not understand the case myself.” (2)

especially as in this case, he caused a Court of Law to be turned into a Court of Chancery—a shifting of jurisdiction not known in Shakespeare's day.

(1) Cooper's "Justinian," Lib. 2, Tit. 12.

(2) "Cymbeline," Act II., Scene 3.

SHAKESPEARE'S USE OF LEGAL TERMS IN OTHER PLAYS.

In considering the use of legal terms by Shakespeare, for the purpose of determining whether or not he had any special technical knowledge of the law, it is necessary to take into consideration, and to always keep in mind, the fact that many words and phrases of a technical and legal character concerning the science of law, and especially that branch of law pertaining to conveyancing, were in common everyday use among laymen in Shakespeare's day, and were not then, as now, confined to the exclusive knowledge of members of the legal profession.

The use of such legal terms naturally suggests to the modern reader that the author making use of them must necessarily have had some special training. But when considered from the standpoint of the common knowledge of such terms at the time they were written, it becomes necessary to differentiate between terms then in common use and terms confined exclusively to the knowledge of those writers learned in the law. Many terms in common use in everyday transactions have since become either quite obsolete or of such infrequent use that the knowledge of their legal significance is now restricted to those who have made a special study of the

science—indicating research in the use of terms which were heretofore the common knowledge of the average man of affairs.

Commentators have endeavoured to show that, by using such terms as appear highly technical to-day, Shakespeare must have been deeply learned in this science. They have expended much energy in this direction over Shakespeare's use and description of the Writ of *Præmunire*. Such a term, we must admit, sounds a high note of legal erudition to the layman of to-day, but to the layman of Shakespeare's day it was quite well known. It was used for despoiling the churches and monasteries of their property to secure revenue for the Crown, and was a common topic of the day, as well known to all classes as Church Disestablishment is known to-day. The only instance of Shakespeare's use of this writ that indicates any special knowledge of it, more than might be expected of any well-informed man of his day, is in the famous scene between Cardinal Wolsey and the Dukes of Norfolk and Suffolk and the Earl of Surrey, (1) which has been quoted by many critics to prove Shakespeare's profound knowledge of the law.

But these critics have apparently overlooked the fact that the material for this scene, especially that part of it which is of legal significance, was borrowed bodily from Holinshed, and to show this we now quote in parallel columns from Holinshed and Shakespeare.

(1) "King Henry VIII.," Act III., Scene 2.

HOLINSHED.

"In the meantime the King, being informed that all those things the Cardinal had done by his power legatine within this realm were in the case of the præmunire and its provision, caused his Attorney, Christopher Hales, to sue out a writ of præmunire against him, in the which he licensed him to make his Attorney. And, furthermore, the seventeenth of November the King sent the two dukes of Norfolk and Suffolk to the Cardinal at Westminster, who went as they were commanded, and finding the Cardinal there they declared that the King's pleasure was that he should surrender up the great seal into their hands, and to depart simply unto Asher . . . After this, in the King's bench, his matter for the præmunire being called upon two Attorneys, which he had authorized by his warrant signed with his own hand, confessed the action, and so had judgement to forfeit all his lands, tenements, goods and cattels, and to be out of the King's protection." (1)

SHAKESPEARE.

NORFOLK :—

"Hear the King's pleasure,
Cardinal: who commands
you

"To render up the great seal
presently

"Into our hands; and to con-
fine yourself

"To Asher-house, my lord of
Winchester's

"Till you hear further from his
highness."

* * *

SUFFOLK :—

"Lord Cardinal, the King's
further pleasure is :—

"Because of those things you
have done of late

"By your power legatine within
this kingdom,

"Fall into the compass of a
præmunire,—

"That therefore such a writ be
sued against you;

"To forfeit all your goods,
lands, tenements

"Chattels, and whatsoever, and
to be

"Out of the King's protection." (2)

It is interesting to note that there is little difference between the foregoing from a legal point of view. Holinshed uses the word "cattels," while Shakespeare uses the term "chattels." These words, however, were used synonymously in Shakespeare's day, and it would appear that that used by Holinshed was in more technical legal use, while that used by Shakespeare was in greater use by all classes—which argues less technical legal skill in Shakespeare than in Holinshed—and if we

(1) Holinshed's "Chronicle," pp. 741-743.

(2) Shakespeare's "Henry VIII.," Act III., Scene 2.

accept the folio reading of "castles" for "chattels," it makes out a worse case for Shakespeare, because it is difficult to conceive that anyone understanding law would use the word "castles" for the reason that the forfeiture of the Cardinal's lands would also include castles or buildings thereon, unless we assume that the "castles" were on leased land, which is too far-fetched an assumption to be worthy of the slightest consideration, further than to note such slight possibility. Another difference between the two authors is that Holinshed uses the phrase "case of the præmunire" while Shakespeare uses "compass of a præmunire." This departure from the text of Holinshed seems to have been made by Shakespeare purely for metrical purposes of his verse, and the change has no special legal significance.

And, earlier in the same play, we find, in the description of the trial of the Duke of Buckingham, what at first appears to indicate a familiarity with legal procedure and technical terms because the description of the trial, and the legal language used, is fairly accurate; but, as we have seen that Shakespeare borrowed the Wolsey scene from Holinshed, we find that he has likewise borrowed the material for the description of this scene from Hall's Chronicles, and, as before, we quote the language of the two authors in parallel columns for comparison.

HALL.

"When the lordes had taken
their places, sir Thomas Lowel
and sir Richard Chomley
knightes brought the duke to
the barre with thaxe of the
Tower before him who humbly
bareheaded revered the duke
of Northfolke, and after all the
lordes and the kinges lerned

SHAKESPEARE.

"The great duke
"Came to the bar; where, to
his accusations,
"He pleaded still, not guilty,
and alleg'd
"Many sharp reasons to defeat
the law.
"The king's attorney, on the
contrary,

counsail. Then the Clarke of ye
consail sayd, sir Edward Duke
of Buckyngha hold up thy
hands, thou are endited of high
treason, for that thou traitor-
ously hast conspired and
ymagined as farre as in thee lay
to shorten the life of our
soueraigne lorde the Kyng; of
this ~~reason~~ how will thou
acquite thee, the duke answered
by my Peres. And when then-
ditement was openly rede, the
Duke sayd it is false and untrue,
and conspired and forged to
bryng me to my death, and that
will I prove allegyng many
reasons to falsefy the indite-
ment, and against his reasons
the kynges Atturnay alledged
the examinacions, cofessions
and proues of witnesses. The
Duke desired the witnesses to
be brought furth, then was
brought before him sir Gylbert
Perke priest his Chauncellor,
fyrst accuser of the same Duke,
Master, Ihon Delacourt priest,
the Dukes Confessor and his
owne hand wrytyng layde before
him to the accusation of the
duke," etc. (1)

"Urg'd on the examinations,
proofs, confessions
"Of divers witnesses; which
the duke desir'd
"To have brought, *viva voce*, to
his face;
"At which appear'd against
him, his surveyor;
"Sir Gilbert Peck, his chancellor
and John Court,
"Confessor to him; with that
devil-monk,
"Hopkins, that made this
mischief." (2)

Thus we see, from a comparison of the texts of Holinshed, Hall and Shakespeare, that it required no special legal knowledge or training to embody the technical terms and legal effect of Holinshed's and Hall's Chronicles into the apparently technical legal language of the characters in this play of Shakespeare's, especially when this apparently technical language of the law was the common parlance of the day; and the same is true of many other technical expressions used by Shakespeare and most other contemporary dramatic authors. Many of

(1) Hall's "Chronicles," p. 628.

(2) Shakespeare's "King Henry VIII," Act II., Scene 1.

these words familiar to these laymen have ceased, through disuse, to be familiar at the present time, to all except the members of the legal profession and those who have made a study of the science of the law. As one example among many instances—When the layman of to-day reads of “fine and recovery” in Shakespeare’s works or hears it mentioned by a member of the Bar, he does not understand it, because there is now no such procedure, and he is at once impressed with the deep learning which he supposes necessary to cope with the use of such high-sounding legal language, but when he realizes that such terms were as well known to all classes then as a *parliamentary closure* is at the present time, he ceases to marvel at the apparent legal knowledge displayed in their use by Shakespeare and his contemporaries.

One of Shakespeare’s contemporary dramatists says: “There is another ordinary at which your London usurer, your stale bachelor, and your thrifty attorneys do resort; the price, three pence; the rooms are as full of company as a gaol. If they chance to discourse it is of nothing but statutes, bonds, recognizances, audits, subsidies, rents, sureties, enclosures, liveries, indictments, outlawries, feoffments, judgements, commissions, bankrupts, amercements and of such horrible matter.” (1) All of which goes to show that a man with Shakespeare’s faculties for absorption could, through mingling with these people, easily have made use of many legal terms without having made any special study of the subject. The same condition seems to have prevailed among other contemporary dramatists as well. Some of these dramatists, it is true, were members of the legal profession, but many of them were

(1) Dekker’s “Gull’s Hornbook.”

not. One contemporary poet and dramatist in particular, who seems, so far as we are able to ascertain, never to have been in any way connected with the profession of law, has written as much law—and much good law too (and the same may be said of others) (1)—in one of his plays as we are able to find in any one of Shakespeare's plays: and who has written one passage that contains law terms and legal technicalities enough to confound Blackstone and the Chief Justices of England, as the following will show:

"I think it would be something tedious to read all, and therefore, gentlemen, the sum is this: That you, Signor Cornelio, for divers and sundry weighty and mature considerations you especially moving, specifying all the particulars of your wife's enormities in a schedule hereunto annexed, the transcript whereof is in your tenure, custody, occupation and keeping; that for these the aforesaid premises, I say, you renounce, disclaim and discharge Gazetta from being your leeful or your lawful wife, and that you eftsoons, divide, disjoin, separate, remove, and finally eloigne, sequester and divorce her from your bed and your board; that you forbid her all access, repair, egress or regress to your person or persons, mansion or mansions, dwellings, habitations, remainences or abodes, or to any shop, cellar, solar, easements, chamber, dormer, and so forth, not in the tenure, custody, occupation or keeping of the said Cornelio; notwithstanding all former contracts, covenants, bargains, conditions, agreements, compacts, promises, vows, affiances, assurances, bonds, bills, indentures, poll-deeds, deeds of gift, defeasances, feoffments, endowments, vouchers, double vouchers, priory entries, actions, declarations, explications, rejoinders, rights, interests, demands, claims, or titles whatsoever heretofore betwixt the one and the other party or parties being had, made, passed, covenanted and agreed, from the beginning of the world to the day of the date hereof. Given the seventeenth of November, fifteen hundred and so forth. Here, sir, you must set your hand." (2)

(1) John Webster's "The Devil's Law Case," etc.

(2) George Chapman's "All Fools," Act IV., Scene 1.

Compared with the foregoing Shakespeare's scene over the skull:

"Where be his quiddits now, his quillets, his cases, his tenures, and his tricks? Why does he suffer this rude knave to knock him about the sconce with a dirty shovel and will not tell him of his action of battery? Humph! This fellow might be in's time a great buyer of land, with his statutes, his recognizances, his fines, his double vouchers, his recoveries: Is this the fine of his fines, and the recovery of his recoveries, to have his fine pate full of fine dirt? Will his vouchers vouch him no more of his purchases, and double ones too, than the length and breadth of a pair of indentures?" (1)

so often cited in support of Shakespeare's legal acquirements—pales into insignificance as an exhibition of legal technicalities. We find no term of a legal technical nature in this speech that is not used with equal glibness in the language quoted from his two contemporary dramatists, (2) which was common parlance of the day; and many of the technical legal terms used by these writers are not even to be found in the plays attributed to Shakespeare.

We have seen that Shakespeare borrowed his legal phraseology in King Henry VIII. from Holinshed's and Hall's Chronicles—let us now consider the source of his exposition of the Salic Law in which commentators have found such a marvellous exhibition of Shakespeare's profound legal knowledge. It is granted that, on the face of it, this exposition of the Salic Law seems to indicate great legal erudition on the part of Shakespeare, and it is amazing to note with what reckless credulity so many commentators have founded their arguments in

(1) "Hamlet," Act V., Scene 1.

(2) Chapman's "All Fools," Act IV., Scene 1; and Dekker's "Gull's Hornbook."

favour of Shakespeare's legal acquirements upon this and other expositions of the law found in his plays, without enquiring into the sources from which he appropriated, not only the subject matter but, oftentimes, the very language used. Holinshed is, again, the source from which he derived the material for his famous exposition of the Salic Law, as will appear from a comparison of the language on the subject, quoted from the two authors, in parallel columns :

HOLINSHED.

" Herein did he much envie against the surmised and false fained law Salike which the Frenchmen alledge over against the Kings of England in barre of their just title to the crowns of France. The verie words of that supposed law are these, In terram Salicam muliereo ne seccedant that is to saie, into the Salike land let not woman succeed. Which the French glossers expound to be the realme of France, and that this law was made by King Pharamond; whereas yet their owne authors affirme that the land Salike is in Germanie between the rivers of Elbe and Sala, and that when Charles the Great overcame the Saxons, he placed there certaine Frenchmen, which having in disdeine the dishonest mouners of the Yeomans women, made a law, that the females should not succeed to any inheritance within that land, which at this day is called Meisen, so that if this be true, this law was not made for the realme of France, nor the Frenchmen possessed the land Salike, till foure hundred and one and twentie years after the death of Pharamond, the sup-

SHAKESPEARE.

" There is no bar
 " To make against your highness' claim to France
 " But this, which they produce from Pharamond.
 " " In terram Salicam mulieres ne succedant ;"
 " No woman shall succeed in Salique land :
 " Which Salique land the French unjustly gloze
 " To be the realm of France, and Pharamond
 " The founder of this law and female bar.
 " Yet their own authors faithfully affirm
 " That the land Salique is in Germany,
 " Between the floods of Sala and of Elbe ;
 " Where Charles the Great, having subdued the Saxons,
 " Who, holding in disdain the German women
 " For some dishonest manners of their life,
 " Establish'd then this law : to wit no female
 " Should be inheritrix in Salique land ;
 " Which Salique, as I said, 'twixt Elbe and Sala,
 " Is at this day in Germany call'd Meisen.

posed maker of this Salike law, for this Pharamond deceased in the year 426, and Charles the Great subdued the Saxons, and placed the Frenchmen in those parts beyond the river Sala, in the years 805.

"Moreover, it appeareth by their owne writers that King Pepine, which deposed Childerike, claimed the crowne of France, as heire generall, for that he was descended of Blithild, daughter of King Clothair the first; Hugh Capet also, who usurped the crowne upon Charles, Duke of Lorraine, the sole heire male of the line and stocke of Charles the Great, to make his title seeme true, and appeare good, though in deed it was starke nought, conveyed himselfe as heire to the ladie Lingard, daughter of King Charlemaine sonne to Lewes the emperour, that was son to Charles the Great, King Lewes also the tenth, otherwise called Saint Lewes, being verie heir to the said usurper Hugh Capet, could never be satisfied with his conscience how he might justlie keepe and possesse the crowne of France, till he was perswaded and fullie instructed that Queen Isabel his grandmother was lineallie descended of the ladie Ermengard, daughter and heire to the above named Charles, duke of Lorraine, by the which marriage, the blood and line of Charles the Great was againe united and restored to the crowne and scepter of France, so that more cleere than the sun it openlie appeareth that the title of King Pepin, the claim of Hugh Capet, the possession of Lewes, yea and the French Kings to this daie, are derived and conveyed from the heire female,

"Then doth it well appear the Salique law
 "Was not devised for the realm of France,
 "Nor did the French possess the Salique land
 "Until four hundred one and twenty years
 "After defunction of King Pharamond
 "Idly supposed the founder of this law,
 "Who died within the year of our redemption
 "Four hundred twenty-six and Charles the Great
 "Subdued the Saxons, and did beat the French
 "Beyond the river Sala, in the year
 "Eight hundred five. Besides their writers say,
 "King Pepin, which deposed Childerick
 "Did, as heir general, being descended
 "Of Blithild, which was daughter to King Clothair,
 "Make claim and title to the crown of France,
 "Hugh Capet—who usurp'd the crown
 "Of Charles the duke of Lorraine sole heir male
 "Of the true line and stock of Charles the Great—
 "To find his title with some shows of truth,
 "Though, in pure truth, it corrupt and nought,
 "Convey'd himself as heir to the Lady Lingare,
 "Daughter to Charlemain, who was the son
 "To Lewes the Emperor and Lewes the son
 "Of Charles the Great also King Lewes the tenth,
 "Who was sole heir to the usurper Capet,
 "Could not keep quiet in his conscience

though they would under the colour of such fained law, barre the Kings and Princes of this realme of England of their right and lawful inheritance."

(1)

- " Wearing the crown of France, till satisfied
- " That fair Queen Isabel, his grandmother
- " Was lineal of the Lady Ermengare,
- " Daughter to Charles the afore-said Duke of Lorriane.
- " By the which marriage the line of Charles the Great
- " Was re-united to the crown of France.
- " So that, as clear as is the summer's sun,
- " King Pepin's title and Hugh Capet's crown claim,
- " King Lewes his satisfaction, all appear
- " To hold in right and title of the female.
- " So do the Kings of France unto this day;
- " Howbeit they would hold up this Salique law,
- " To bar your highness claiming from the female,
- " And rather choose to hide them in a net
- " Than amply to imbare their crooked titles
- " Usurp'd from you and your progenitors." (2)

In comparing these authors, we find that Shakespeare's exposition is to all intents and purposes, merely a paraphrase, in meter, of Holinshed, and that Shakespeare was so faithful in copying Holinshed that he even reproduced his errors. It will be observed that they both fix the time at 421 years after the death of Pharamond: they both agree that Pharamond died at 426, and that Charles the Great subdued the Saxons in 805; this, however, figures out 379 years after the death of Pharamond, instead of 421 years. It is obvious that the error

(1) Holinshed "Chronicle."

(2) "King Henry V.", Act I., Scene 2.

occurred in transposing figures: in setting the amounts down to make the subtraction, *i.e.*, the first figure of the 805 and the two last figures of the 426 were set down, making 826; then the first figure of the 426 and the last two figures of the 805 were set down, making 405; which taken from the 826 would make 421, the number arrived at, when, as a matter of fact, it should have been 379. Moreover, they both call Hugh Capet's heir King Lewes the tenth, whereas, he was, in fact, King Lewes the ninth. If any evidence further than the similarity in language is needed to show that Shakespeare copied the passage from Holinshed conclusive proof is shown by the fact that it is inconceivable that two authors could have made the same errors in calculating the time above referred to. Notwithstanding this fact that the author of "King Henry the Fifth" copied his exposition of the Salic Law from Holinshed and is in no manner entitled to credit for the arguments therein, this is one of the often quoted passages to prove Shakespeare's profound knowledge of jurisprudence. It illustrates how prone the admirers of his legal acquirements are to accept blindly everything in his plays as emanating from his own brain, instead of critically examining the sources from which he copied his legal material. His literary critics have not been guilty of quite such gross negligence, as they have fairly well traced the sources of his plots and found them, likewise, largely borrowed. In passing on we might also note that

HOLINSHED SAYS:

"The Archbishop further alleged out of the booke of numbers this saieing: when a man dieth without a soun let the inheritance descend to his daughter." (1)

SHAKESPEARE SAYS:

"For in the book of Numbers is it writ,
When a man dies, let the inheritance
Descend unto the daughter." (2)

(1) "Holinshed Chronicle." (2) Shakespeare's "King Henry V."

to show that Shakespeare also appropriated from Holinshed his exposition of the Levitical Law, often quoted in support of the theory of his biblical knowledge and legal training.

Holinshed's and Hall's Chronicles are the source from which Shakespeare obtained the plots and technical legal language and situations in all his English historical plays, paraphrasing the texts of these authors and often literally copying their language, and especially their legal terms, as the following shows:—

SHAKESPEARE.

"I am denied to sue my livery here,
 "And yet my letters-patents give me leave.
 "My father's goods are all distrain'd and sold;
 "And these, and all, are all amiss employ'd.
 "What would you have me do? I am a subject
 "And challenge law: Attorneys are denied me;
 "And therefore personally I lay my claim
 "To my inheritance of free descent." (1)

It will be noted that Shakespeare copied Holinshed so accurately in writing the foregoing, that he even reproduced Holinshed's double plurals in "letters-patents." Other than this, there is nothing so striking as to call for special comment, except the fact that Shakespeare, in following Holinshed, used the legal term "distrained" in a fairly correct sense, in contradistinction to his incorrect use of the word in

"Here's Beaufort, that regards nor God, nor King,
 "Hath here distrain'd the Tower to his use." (2)

The definition of a distrain is "the act of taking movable property out of the possession of a wrong-doer,

(1) Shakespeare's "King Richard II.," Act II., Scene 3.

(2) "King Henry VI.," part 1, Act I., Scene 3.

to compel the performance of an obligation, or to procure satisfaction for a wrong committed, like a distress for rent." (1)

From this definition it will be seen that distrained is not the proper legal term to use to convey the idea of forcibly taking possession of the Tower and holding it, which is the meaning evidently intended in this case. This erroneous use of the term was doubtless original with Shakespeare, while the correct use of the term was copied from Holinshed.

It is pertinent to this topic to note that when law terms are correctly used in their legal sense in Shakespeare's plays, it can usually be shown that he copied them substantially and often literally, from Holinshed, Hall and other sources, and that when he uses them erroneously or not in their legal sense, they are not traceable to any other source than the poet's imagination; which is a potent argument, if not a positive proof, that Shakespeare had no special appreciation of the legal significance of many of the legal terms he made use of in his plays, and that the plays could not have been written by a member of the legal profession. He used the term "dower" seventeen times in his works, but only once is it used to denote what the word legally means now, and then meant, and that is when he says:

" I must confess your offset is the best:
 " And, let your father make her the assurance,
 " She is your own; else, you must pardon me,
 " If you should die before him, where's her dower?" (2)

(1) " Blackstone's Commentaries," 6.

(2) " The Taming of the Shrew," Act II., Scene 1.

The definition of "dower" was in Shakespeare's day :
 "The third part of all such freehold lands as her husband
 held at the time of affiancing, and of which he was
 seized in his demesne, is termed a woman's reasonable
 dower." (1) Another authority of the time says :

"Dower was the woman's life interest in the lands of which
 her husband died seized for her and her children's nutri-
 ment and support." (2)

Other authorities (3) of the period give substantially
 the same definition. In many instances Shakespeare used
 the word "dower" where he should have used the word
 "dowry" or "dos," which meant that which was given to
 a female at her marriage usually by her father, but might
 be given her by any one. Shakespeare seems to have had
 no appreciation of the legal distinction between the two
 terms. It is not necessary to quote the whole sixteen
 instances where he has used the word "dower" in the
 wrong legal sense. A few examples should suffice to
 show his lack of appreciation of its legal significance.

"We have this hour a constant will to publish

"Our daughters' several *dowers*, that future strife

"May be prevented now." (4)

This was a gift by King Lear of his Kingdom, which he
 divided among his three daughters, and was therefore
 their several *dowries* and not their *dowers* as Shakespeare
 erroneously expresses it.

"Doubt not, but Heaven

"Hath brought me up to be your daughter's *dower*

"As it hath fated her to be my motive

"And helper to a husband." (5)

(1) "Glanville," Book VI., p. 113.

(2) "Littleton," Vol. II., p. 49.

(3) "Bracton,"

(4) "King Lear," Act I., Scene 1.

(5) "All's Well that Ends Well," Act IV., Scene 4.

Diana, the daughter, had no husband, dead or alive, and, therefore, cou'd have no *dower* rights in anything, and least of all in Helena. *Dowry* should have been used, for in a prior scene Helena says to Diana's mother:—

“ After this,

“ To marry her, I'll add three thousand crowns

“ To what is past already.” (1)

This clearly shows that Helena proposed to give Diana a dowry at her marriage if she would consent to carry out the conspiracy which Helena proposed, and, therefore, it could not be, by any stretch of imagination, considered as a dower right, for in such use of the word dower the effect would be equivalent to Helena being metamorphosized into the life interest of Diana in the lands of which her husband died seized—which, of course, would be a legal *reductio ad absurdum*—Shakespeare evidently intended that Helena should give Diana a dowry, but did not understand the legal distinction between the two terms, and used the wrong legal term in this instance as in other cases throughout his works where he uses the two words interchangeably without reference to their legal significance.

The legal meaning of *moiety* is “one of two equal parts,” (2) but Shakespeare frequently uses the word in the loose sense of meaning some other part than one half.

“ Methinks my moiety, north from Burton here,

“ In quantity—equals not one of yours.” (3)

(1) “ All's Well that Ends Well,” Act III., Scene 7.

(2) “ Littleton Section,” 291.

(3) “ King Henry IV.,” Part I., Act III., Scene 1.

Here the division of the territory was to be in three parts, while

"On me, whose all not equals Edward's moiety," (1) might mean one half, or any other undeterminable part of the King.

In Slade's Case, (2) in the 44th year of Queen Elizabeth, it was first decided that an action on the case would lie for debt, or for causes arising *ex contractu* as distinguished from causes arising *ex delicto*: yet nine years before this right of action was known in England Shakespeare wrote:

"I do not know the matter; he is 'rested on the case." (3)

In seeking the grounds for this arrest we find it in the preceding scene, (4) and it appears to be an action for debt arising *ex contractu*. Such an action was unknown in English law at the time Shakespeare wrote this play in 1593, according to accepted authorities. (5) Moreover, from this scene, it appears that the arrest was made without any original writ, or mesne process, by oral instruction of the creditor to the officer:

"Here is thy fee; arrest him officer." (6)

This could not be done without a *capias ad respondendum*, which would be issued only on causes arising *ex delicto*, or causes arising out of a wrong or trespass, and no such tort is even suggested by the scene. It would not have been a difficult matter for Shakespeare to have arranged the scene to conform to legal practice, and the

(1) "King Richard III.," Act I., Scene 2.

(2) 4 Rep. 83.

(3) "Comedy of Errors," Act IV., Scene 2.

(4) "Comedy of Errors," Act IV., Scene 1.

(5) Furness, Rolfe, Collier, &c.

(6) "Comedy of Errors," Act IV., Scene 1.

fact that he did not do so, and committed such gross errors, shows his lack of knowledge of legal procedure. It does not seem that this scene deserves all the eulogium of commentators (1) who have cited it in attempting to show Shakespeare's technical knowledge of the law, for it was an everyday occurrence for debtors to be arrested and confined in jail before judgment, unless bail was furnished, and this procedure was not confined to the knowledge of lawyers, but was quite well known to all classes of average intelligence.

Commentators have tried to show that Shakespeare's use of "common" and "several" proved his deep learning:

"My lips are no common, though several they be." (2)

and

"What's here?" (Reads) "'Gainst the

"Duke of Suffolk for enclosing the commons of Melford." (3)

In every community in England, under the feudal system, certain lands were set apart from that held individually, for the common use of the peasants. The encroachment of the Lord of the Manor on these commons and the disposition of the landlord to enclose them away from common use and appropriate them as the private property of the landlords, has, from feudal times down almost to our present day, been a source of serious disputes. The respective rights of the Lord of the Manor and the tenants were, in the time of Shakespeare, quite well known to the man of average intelligence, and therefore required no technical knowledge of the law on

(1) Lord Campbell: "Shakespeare's Legal Acquirements," 46.

(2) "Love's Labour's Lost," Act II., Scene 1.

(3) "King Henry VI.," Part II., Act I., Scene 3.

the subject to enable the author to make use of the language he has given us on the subject of lands in common and severalty Besides

"My lips are no common, though several they be" (1)

is sheer nonsense, because if the lady's lips were held in severalty they could not, as a matter of course, be held in common. Had Shakespeare used the word "but" instead of "though" in the foregoing line, it would have fulfilled equally well the dramatic and metrical requirements, and made the speech legally intelligible. Moreover, if we are to accept the identity of Shakespeare the author with Shakespeare of Stratford-upon-Avon, it appears that the author had some personal experience with the enclosing of Welcombe Commons, in which he seems to have especially interested himself. (2) Another example of that which seems highly technical:

"How now, a kiss in fee farm?" (3)

At the present time the term "fee farm" appears to the layman very technical, notwithstanding that the word "fee," when applied to right in lands, is now well known to all classes. In Shakespeare's day the term "fee farm" was quite well known to the person of average intelligence, because it was a very common way of holding land. The definition of the term at the time the author makes use of it was as follows:

"Fee farm is when a tenant holds of his lord in fee simple, paying to him the value of half of the one third, fourth, or other part of the land by the year." (4)

(1) "Love's Labour's Lost," Act II., Scene 1.

(2) "Enclosing Welcombe Common."

(3) "Troilus and Cressida," Act III., Scene 2.

(4) "Les Termes de la Ley," p. 220.

From this definition it will be seen that no special technical knowledge of law was necessary to use the term, especially when so much land, especially in rural districts, was held in this manner. But it requires some ingenuity to account for the use of the word in its legal sense when applied to a kiss. Inasmuch as fee simple signified a title in perpetuity, a *kiss in fee farm* would necessarily mean a *kiss in perpetuity*, subject to certain annual payment by the tenant to his lord arising out of the enjoyment of the fee. Modesty forbids us to pursue the analysis of the meaning to its logical conclusion. Besides, it is not probable that Shakespeare ever intended any ulterior significance in the use of the term. It is more than likely that he confused the meanings of *fee simple* and *fee farm*. In any event, using the term as he did shows that he had no appreciation of its technical legal significance, even as well known as it then was to all classes.

Commentators are fond of citing Shakespeare's many allusions to the legal word "indenture" to prove his technical knowledge of law terms. It is true that he sometimes uses the term in its technical legal sense, but this can be accounted for without attributing to his use of the word any technical knowledge of its legal significance beyond that of any well informed man of letters of his day. It was then a commonly used legal document, as well known as an ordinary contract is known to-day. In fact it was an ordinary written contract, essentially differing from a modern written contract by having the same matter written twice or more on the same sheet leaving a space between each written matter, then each part was detached from the other by

tearing or cutting, or indenting through the vacant space, and a part given to each of the contracting parties. The fact that the indented line of one matched that of another was proof of the genuineness of the document, and this indenting was then actually necessary to constitute an indenture, and was a well-known document in common use. While Shakespeare uses the word sometimes correctly, as we have said, sometimes he uses it in such a way as to negative any argument in favour of his having any special appreciation of its legal significance, as the following will illustrate :

"For if a King bid a man be a villain, he's bound

"By the indenture of his oath to be one." (1)

An oath of allegiance to a sovereign was never in the form of an indenture, and there was no oath attaching to an indenture, so Shakespeare has here used the word erroneously, unless we conclude that by *indenture* he simply meant the zigzag stability of the oath in question, but, in the latter interpretation the expression loses all legal significance.

"'Tis semper idem, for absque hoc nihil est ;

"'Tis all in very part." (2)

Shakespeare's use of *absque hoc* was probably not intended to be used in any legal sense whatever. As it is put into the mouth of a comedian, it was more likely intended for nonsense. It is the only time Shakespeare attempts to use the term.

He seems to have a very vague idea of *jointure* in his loose employment of the idea in

"Therefore our sometime sister, now our queen,

"The imperial jointress of this warlike state." (3)

(1) "Pericles, Prince of Tyre," Act I., Scene 3.

(2) "King Henry IV.," Part II., Act V., Scene 5.

(3) "Hamlet, Prince of Denmark," Act I., Scene 2.

The legal definition of jointress, according to the authority (1) of the day, was a woman whose husband had settled a life estate upon her should she survive him, as a means of barring her dower rights. As the Queen could have no dower rights in the Kingdom, the term *jointress* is misused in a legal sense. Another legal term which Shakespeare uses in a very loose legal sense is "testament":

"But there's a parchment, with the seal of Cæsar;
 "I found it in his closet; 'tis his will:
 "Let but the commons hear this testament."

* * * * *

"Here is the will, and under Cæsar's seal.
 "To every Roman citizen he gives,
 "To every several man, seventy-five drachmas."

* * * * *

"Moreover, he hath left you all his walks,
 "His private harbours, and new-planted orchards,
 "On this side Tyber; he hath left them you,
 "And to your heirs for ever, common pleasures,
 "To walk abroad, and recreate yourselves." (2)

It may be interesting to note that wills, under the Common Law of England, did not need to be under seal; while, under the Roman Law in the time of Cæsar six seals were necessary in addition to that of Cæsar, (3) viz., five witnesses and the *libripens*, unless it were a *military will* (or testament *in procinctu*) which had fallen into disuse, (4) likewise the form of will recorded in the *Comitia Calata*—in any event neither of these forms was required to be under seal. Moreover, Shakespeare does not use the word "heirs" in a legal sense, for an heir

(1) "Les Termes de la Ley," p. 472.

(2) "Julius Cæsar," Act III., Scene 2.

(3) "Gaius" (Poste), p. 216.

(4) H. J. Robey: "Roman Private Law in the time of Cicero," p. 176; "Gaius" (Poste), p. 216.

under the Roman Law was a universal successor to the entire property and personalty of the testator, (1) while, under the Common Law of England, public bodies do not, legally speaking, have heirs, but successors. It is, therefore, an erroneous use of the term from a legal point of view.

And again, according to authorities (2) on the subject lands could not be given by testament; it must be by will; only personal property could be given by testament; yet Shakespeare says:

"For all the temporal lands, which men devout
By testament have given to the Church,
Would they strip from us." (3)

This shows an extremely loose use of the term; such use that one with any knowledge of legal phraseology would not have made.

"Mine eye and heart are at a mortal war,
How to divide the conquest of my sight;
"Mine eye, my heart, thy picture's sight would bar,
"Mine heart, mine eye, the freedom of that right.
"My heart doth plead that thou in him dost lie
(A closet never pierced by crystal eyes),
"But the defendant doth that plea deny,
"And says of him thy fair appearance lies.
"To 'cide this title is impannelléd
"A quest of thoughts, all tenants to the heart;
"And by their verdict is determinéd
"The clear eye's moiety and the dear heart's part:
"And thus; mine eye's due is thine outward part,
"And mine heart's right thine inward love of heart." (4)

This is in effect an action before a jury to try title to a lady, with the gentleman's heart as plaintiff and his

-
- (1) "Gall Institutionum Juris Civilis Commentarii Quattnor" (Poste), 215.
(2) "IV. Burns' Ecclesiastical Law," p. 44.
(3) "King Henry V.," Act I., Scene 1.
(4) Sonnets XLVI.

eye as defendant. In this action, curiously enough, both plaintiff and the defendant claim not only an equitable title but also actual possession. Neither of the litigants complains of a disseisin. The plaintiff's declaration, which he calls a plea, claims that :

" My heart doth plead that thou in him dost lie." (1)

Thus claiming not only title, but possession as well. To this the defendant answers, saying :

" But the defendant doth that plea deny." (1)

Thus entering a general denial of the plaintiff's declaration, and then goes on :

" And says of him thy fair appearance lies." (1)

Thus claiming not only title, but possession as well in himself. To decide this issue a jury is empanelled, being :

" A quest of thoughts, all tenants to the heart." (1)

Here we are treated to the extraordinary procedure of drawing the jury from the tenants of the plaintiff, from whom they derived their titles and with whom they were all parties in interest. Needless to say that such a procedure was a travesty on justice. However, the jurymen seemed to have duly qualified, notwithstanding their apparent bias, and rendered a verdict in the case, apportioning the lady between the litigants as follows :

" Mine eye's due is thine outward part " (1)

for the defendant and

" My heart's right thine inward love of heart " (1)

for the plaintiff ; being an award of exactly what each claimed in the beginning. We are not told by

Shakespeare if in this absurd trial the Court ordered each to pay his own bill of costs.

"Sir, for a quart d'eau he will sell the fee-simple of his salvation, the inheritance of it, and cut the entail from all remainders, and a perpetual succession for it perpetually." (1) It is difficult to see where any technical knowledge of the law would assist one in solving Shakespeare's meaning of the above passage. In fact, one writer has gone so far as to say that a knowledge of law would be more of a hindrance than a help.

The following passage has been cited (2) to show Shakespeare's intimate knowledge of the law of real property, and this commentator goes on to say that Shakespeare exhibits a knowledge not generally possessed, when he says:

"Of what quality was your love, then?

"Like a fair house built on another man's ground:

"So that I have lost my edifice by mistaking the place

"I erected it." (3)

This is a well-known principle of law, known to-day to the average business man of intelligence, and was likewise well known in Shakespeare's days; therefore, it required no great amount of legal knowledge to have written this passage. However, commentators (4) have seen great legal acumen in this passage, and one authority cites the case of the First Parish in Sudbury v. Jones (5) Jones in support of this view. This case,

(1) "All's Well that Ends Well," Act IV., Scene 3.

(2) Lord Campbell: "Shakespeare's Legal Acquirements," 39.

(3) "Merry Wives of Windsor," Act II., Scene 2.

(4) 26 Law Reporter, 2.

(5) 3 Cosh, 184.

however, does not apply, for the reason that in this case the question at issue was whether the First Parish in Sudbury owned the land upon which had been built a school house, or whether the Town of Sudbury owned the land. The Court decided that the land belonged to the First Parish, and, therefore the Town of Sudbury lost the building which it had placed upon the land.

Much ingenuity has also been shown in commenting on Shakespeare's apparent knowledge of Ecclesiastical Law in the grave-digger's scene in Hamlet. But, when we consider the source from which he derived the material for this scene, it is apparent that no special technical learning in the law was necessary to produce this scene. It is based upon the case of *Hales v. Petit*, reported in Plowden, and was a case which created a great deal of comment at the time on account of the quibbles and fine spun theories of the lawyers and the extraordinary opinion of the Court, which was the subject of considerable ridicule, and undoubtedly prompted Shakespeare to write this scene.

CONCLUSION.

Yet, notwithstanding all the bad law and inaccurate law terms which have been herein cited, commentators still persist that Shakespeare must have had a technical legal education. One commentator, in charging a jury trying the issue as to whether Shakespeare was ever a clerk in an attorney's office, says: "I should hold that there is evidence to go to the jury in support of the affirmative, and I should tell the twelve gentlemen in the box that it is a case entirely for their decision, without venturing even to hint to them, for their guidance, any opinion of my own," (1) and the same commentator goes on to say, that "He (Shakespeare) is uniformly right in his law and his use of legal phraseology, which no mere quickness of intuition can account for." (2) And many other commentators have made equally broad assertions as to Shakespeare's technical knowledge of the law.

It has been attempted in the foregoing paper to show, as far as opportunity would permit, Shakespeare's wonderful versatility in various branches of knowledge. In medicine and surgery, it was seen, he exhibited a marked degree of erudition in this art and science; in nautical terms his works equally abound, and are used usually in a very technical sense; in theology and, likewise, in horticulture he appears to exhibit profound knowledge; but the subject in which we are particularly interested in considering, from a technical point of view, is his use of legal terms and phraseology, together with his interpretation of these terms from a legal point of view.

(1) Lord Campbell: "Shakespeare's Legal Acquirements," 9.

(2) Lord Campbell: "Lives of the Chief Justices of England," 213 N. 2.

From what has preceded, it will be observed that Shakespeare sometimes uses law terms in their technical legal sense, but more often does he use them without any special reference to their legal significance. When he does use legal terms in their proper sense, the source from which he obtains them can usually be traced to other authors, such as Holinshed's and Hall's Chronicles, Plutarch's Lives and other sources; and in the majority of cases where he uses such terms erroneously, it is generally impossible to discover from what source he received his material, and, therefore, it is to be concluded that they were original with him, or that he picked them up in a desultory way from personal observation and contact with members of the legal profession. It is not surprising that a man of Shakespeare's genius for gathering and assimilating knowledge would acquire a knowledge of the law sufficient for him to make the inaccurate use of such terms as are found in his works without any technical study of the subject. It seems that we get a more reasonable and logical explanation from the fact that he was a man of marvellous genius and of minute observation of the affairs of life, with an ability to assimilate its facts and conditions from a large acquaintance with men learned in all subjects with which he deals, together with vast and diversified reading, than to conclude, because we find a large amount of apparently technical language in his work, that he had made a profound and technical study of these subjects with which he appears, at least on the surface, to be thoroughly familiar.

Moreover, the sources from which he derived much of his material is still a mooted question. It is certain that a number of plays with similar titles to some

of these used by Shakespeare existed prior to the composition and production of his works, and it is quite probable that, when he went to the Globe Theatre and assumed its management and proceeded to write plays, that he found there a number of manuscripts, some of which may have already been performed, and whose titles have come down to us, but the manuscripts of which have been either destroyed or have not come down to us. It seems likely that Shakespeare may have got much of his material from such a source, and that many of the inaccuracies in his plays may have been simply copied from these old manuscripts in the same manner that has been heretofore pointed out with reference to his faithful copying of inaccuracies in the Salic Law which he found in Holinshed's Chronicles.

Another source from which Shakespeare probably derived a considerable amount of his legal knowledge was through his faculty for absorbing all matters of moment. Prior to the reign of Henry VIII. the greater part of learning was confined to the keeping of the monasteries, and when they were despoiled under the reign of that monarch, their priests were scattered over the length and breadth of the land, and many of them naturally gravitated to the metropolis as the centre of population. These monks being thrown upon their own resources naturally tried to earn their own living, and so turned to teaching and the diffusion of knowledge, which, theretofore, had been kept within their own possession. About the time Shakespeare is credited with coming up to London, this diffusion of knowledge was at its zenith, and many legal treatises were first published—among which may be mentioned Plowden's Commentaries or Reports, Marwood's Forest Law in 1568, Compton's



3 9004 02376803 6

Office and Authority of a Justice of the Peace in 1583, Rastall's Termes de la Lay in 1572, Rastall's Entries in 1596, Brooke's Abridgment of the Law in 1568, Poulton's Abstract of Penal Statute in 1572, and about this time Sir Edward Coke began to give his legal knowledge to the world. Naturally such an array of legal lore, together with the vast number of students at the Inns of Court, had its influence on a great brain like that of Shakespeare, and undoubtedly he did mix freely with lawyers and students, thereby absorbing terms which was their common parlance. We have seen that it is not only in the subject of law, but in nearly all the other arts and sciences, that Shakespeare is equally at home; and he himself, within his works, seems to have given us a reasonable clue to the way in which he obtained the knowledge and information which he discloses to us in his works, when he wrote the following:—

“ Hear him but reason in divinity,
“ And, all-admiring, with an inward wish
“ You would desire the King were made a prelate :
“ Hear him debate of commonwealth affairs,
“ You would say it hath been all in all his study :
“ List his discourse of war, and you shall hear
“ A fearful battle render'd you in music :
“ Turn him to any cause of policy,
“ The Gordian knot of it he will unloose,
“ Familiar as his garter : that, when he speaks,
“ The air a charter'd libertine, is still,
“ And the mute wonder lurketh in men's ears,
“ To seal his sweet and honey'd sentences ;
“ So that the art and practic part of life
“ Must be the mistress to his theorie :
“ Which is a wonder how his grace should glean it,
“ Since his addiction was to courses vain,
“ His companions unletter'd, rude, and shallow,
“ His hours fill'd up with riots, banquets, sports,
“ And never noted in him any study,
“ Any retirement, any sequestration
“ From open haunts and popularity.” (1)

(1) “King Henry V.,” Act I., Scene 1.

165-4

878-1





